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Letter dated 17 June 2003 from the Permanent Representative of Portugal to the United Nations addressed to the Chairman of the Committee

At the request of my Government, I have the honour to enclose herewith the report submitted by Portugal pursuant to paragraphs 6 and 12 of Security Council resolution 1455 (2003) (see annex).

(*Signed*) Gonçalo **Santa Clara Gomes**
Permanent Representative of Portugal
to the United Nations

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Annex to the letter dated 17 June 2003 from the Permanent Representative of Portugal to the United Nations addressed to the Chairman of the Committee

Reply pursuant to paragraphs 6 and 12 of Security Council resolution 1455 (2003)

I. INTRODUCTION

1. **Please provide a description of activities, if any, by Usama Bin Laden, Al-Qaida, the Taliban and their associates in your country, the threat they pose to the country and the region, as well as likely trends.**

Does not arise.

II CONSOLIDATED LIST

2. **How has the 1267 Committee's List been incorporated within your legal system and your administrative structure, including financial supervision, police, immigration control, customs and consular authorities?**

On 11 October 2001 the Portuguese Government, as the expression of its commitment to combating terrorism, issued an executive Order through the Finance Minister[1] ordering the freezing of all financial resources belonging to the persons and entities listed in the Annex to the Council Regulation (EC) No.467/2001 of 6 March, as amended by Council Regulation (EC) No. 1354/2001 of 4 July, both referring to the Taliban.

[1] Order No. 21 175/2001 (2nd Series), published in the Official Journal (*Diário da República Serie II*) of 11 October 2001.

By the said Order, the Government decided, in the framework of the EU initiative to implement the UNSC Resolution 1373/2001, to circulate the lists of persons and entities suspected of being linked to the terrorist acts of September 11 to the banking systems with a view to obtaining relevant information for the investigation and transmission thereof to the competent authorities, pursuant to the said Resolution on prevention of the use of the financial system for the purpose of money laundering.

On 16 February 2002, Act No. 11/2002 was published; it provides for sanctions which will be imposed in the case of failure to comply with financial or commercial sanctions imposed by a UN Security Council Resolution or by a EU Regulation and placing restrictions on the establishment and maintenance of financial or commercial relations with the States, other entities or individuals expressly identified in their subjective scope of application.

The said enactment criminalises the failure to respect the above-mentioned sanctions and anyone who -

- makes funds or financial assets available, directly or indirectly, to entities identified on the relevant resolutions or regulations, or for their benefit; or
- establishes or maintains legal relations subjected to sanctions with any individual identified on the relevant resolutions or regulations, or acquires or increases a part/share or position of control in respect of an estate, undertaking or other type of corporation, even if it is irregularly constituted, located or constituted in a territory identified on such resolutions or regulations

is liable to imprisonment for a term of between 3 and 5 years.

In addition, criminal liability of legal persons, companies or merely *de facto* associations is enshrined in the said Act in respect of offences committed by their bodies or representatives on their behalf and in their interest, in which case it will be applied, as the main penalty, a fine the amount of which will not be less than the amount of the transaction and will not exceed the double of the amount of the same transaction. If the offence is not linked to a transaction, the amount of the fine will be between

€ 5,000 and € 2,500,000, where financial entities are concerned, or between € 2 500 and € 1,000,000, as regards an individual or entity of a different nature.

3. **Have you encountered any problems with implementation with regard to the names and identifying information as currently included in the list? If so, please describe these problems.**

The fact that not enough information has been provided regarding the identity of the person concerned has raised homonymy issues (there has been a case where around fifty identical names included in the database of a banking institution corresponded to a sole name in the UN list).

4. **Have your authorities identified inside your territory any designated individuals or entities? If so, please outline the actions that have been taken.**

Does not arise.

5. **Please submit to the Committee, to the extent possible, the names of individuals or entities associated with Usama Bin Laden or members of the Taliban or Al-Qaida that have not been included in the List, unless to do so would compromise investigations or enforcement actions.**

We have no names to submit.

6. **Have any listed individuals or entities brought a lawsuit or engaged in legal proceedings against your authorities for inclusion in the List? Please specify and elaborate, as appropriate.**

Does not arise.

7. **Have you identified any of the listed individuals as nationals or residents of your country? Do your authorities have any relevant information about them not already included in the List? If so, please provide this information to the Committee as well as similar information on listed entities, as available.**

Does not arise.

8. **According to your national legislation, if any, please describe any measures you have taken to prevent entities and individuals from recruiting or supporting Al-Qaida members in carrying out activities inside your country, and to prevent individuals from participating in Al-Qaida training camps established in your territory or in another country.**

Apart from reply to Q. 2, the Portuguese legal order comprises such relevant provisions on the matter at stake as follows:

The Portuguese Criminal Code[2] in its Chapter on Crimes against Public Order and Peace specifies the acts done by terrorist groups, associations or organisations as well as individual's terrorist behaviour.

Under Section 300, anyone who promotes, founds, supports or joins terrorist organisations, regardless of the commission of any crime envisaged by the organisation, will be punished by imprisonment for a term of 5 to 15 years. It is also set forth that anyone who leads or conducts a terrorist group, association or organisation will be punished by imprisonment for a term of 10 to 15 years. Acts preparatory of the constitution of the terrorist group, association or organisation will be punishable with imprisonment for a term of 1 to 8 years.

[2] Approved by Decree-Law No. 48/95 of 15 March, amended by Act No. 65/98 and Act No. 77/2001 of 13 July, Act No. 97/2001; by Act No. 98/2001 and Act No. 99/2001 of 25 August.

The relevant provision defines a terrorist group, association or organisation as *«any group of two or more persons who, acting in concert, set out to undermine the national integrity and independence or prevent, change or impair the functioning of the State institutions as established in the Constitution; or to force the authorities to act or refrain from acting or tolerate an act being done or to intimidate certain persons or groups or the entire population by committing offences -*

(a) against life, physical integrity or the freedom of individuals;

(b) against the safety of transportation as well as the security of communications, including telegraph, radio or television;

(c) involving ordinary dangers such as arson, releasing radioactive substances or toxic or asphyxiating gases, flooding or avalanche, *tumbling down a building, contamination of food and water for human consumption or dissemination of disease, plague, plant or noxious animal;*

(d) sabotage;

e) involving the use of nuclear energy, firearms, explosive substances or devices, incendiary material of any kind, or parcel or letter bombs.»

Section 301, on the other side, criminalizes individual terrorist acts, characterised by referring to the list laid down in Section 300, and provides that anyone who intentionally commits an act listed therein will be punished by 2 to 10 years' imprisonment, or by the sentence imposable to the crime committed increased by a third in its maximum and minimum limits, if it is of the same length as, or longer than, that one.

Punishment of behaviour amounting to funding terrorism falls currently within the concept of promoting or supporting a terrorist group, which is provided for in Section 300 (1) of the above-mentioned Portuguese Criminal Code.

The said provisions were inspired by the European Convention on the Suppression of Terrorism, concluded in Strasbourg in 1977, which Convention was incorporated into the Portuguese legal order by Act No. 19/81 of 18 August

It is important to stress that Portugal has already ratified 13 multilateral conventions on Terrorism, including –

- *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo, 14.09.63)
- *Convention for the Suppression of Unlawful Seizure of Aircraft* (Hague, 16.12.70)
- *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation* (Montreal, 23.09.71)
- *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal, 23.09.1971)
- *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Personnel (New York, 14.12.73).*
- *European Convention on the Suppression of Terrorism (Strasbourg, 27.01.77)*
- *International Convention Against the Taking of Hostages (New York, 17.12.79)*
- *Convention on the Physical Protection of Nuclear Materials* (Vienna, 03.03.80)
- *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* (Rome, 10.03.88)
- *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf* (Rome, 10.03.88)
- *UN Convention for the Suppression of Terrorist Bombing* (New York, 09.12.99)
- *Convention for the Marking of Plastic Explosives for the Purpose of Detection* (Montreal, 11.03.1991)
- *International Convention for the Suppression of the Financing of Terrorism* (New York, 09.12.99)

Under Article 8 of the Constitution of the Portuguese Republic, the rules provided for in international conventions that have been duly approved and ratified will, following their official publication in the Official Journal, apply in the Portuguese legal order, regardless of transposition or incorporation into statutory enactments pertaining to national law.

Furthermore, the Portuguese criminal law specifies other criminal behaviour usually linked to the terrorist activity, such as -

- aggravated murder of and inflicting unlawful wounding to members of the security forces and services, civil servants and prison guards (12 to 15 years' imprisonment);
- threats (prison sentence not exceeding 2 years) and coercion (1 to 5 years' imprisonment);
- the taking or attempted taking of the life of the President of the Republic (5 to 15 years' imprisonment);
- crimes against internationally protected persons (1 to 8 years' imprisonment);
- unlawful detention (prison sentence not exceeding 10 years), kidnapping (2 to 8 years' imprisonment, a term increased to between 8 and 16 years where the act results in the death of the victim) and hostage-taking (2 to 10 years' imprisonment, a term increased to between 8 and 16 years where the act results in the death of the victim);
- extortion (imprisonment for a maximum term of 5 years, a term increased to between 8 and 16 years where the act results in the death of the victim);
- manufacture, possession or use of banned weapons or explosives, release of toxic gases, radioactive substances, nuclear energy, radiation emissions (sentence which may increase to 15 years' imprisonment) and corruption of food or medicine (1 to 8 years' imprisonment)
- hijacking or seizure of aircrafts, ships or other means of public transport (sentence may increase to 15 years' imprisonment);
- sabotage and sabotage against national defence (imprisonment for a term of between 3 and 10 years);

- computer-related sabotage (sentence may increase to 10 years' imprisonment).

The application of the Portuguese criminal law is governed by the principles of territoriality, supplemented by those of defence of national interests and of nationality, the universal application of criminal law and the plurality of the commission of the crime.

Thus, the national criminal law is generally applicable to facts occurred in the Portuguese territory and, unless otherwise stated in an international treaty or convention, to facts occurred outside the national territory provided that such facts -

- constitute terrorist organisation crimes, crimes of terrorism, crimes against the security of the State or against the rule of law, *inter alia*;
- constitute crimes against peace, crimes of trafficking in human beings, kidnapping, slavery or servitude, destruction of monuments, *inter alia*, provided that the offender is found in Portugal; or
- against Portuguese by Portuguese who have their habitual residence in Portugal at the time the crime was committed and who are found in Portugal;
- by Portuguese, or by aliens against Portuguese nationals, where the offenders are found in Portugal, being punishable at the place of commission of the offence, and where the facts constitute a crime which allows extradition and the latter may not be granted;
- by aliens who are found in Portugal and whose extradition has been requested, when it is the case of crimes allowing extradition and the latter may not be granted.

As far as extradition is concerned[3], the Constitution of the Portuguese Republic enshrines an exceptional regime where crimes of terrorism are at issue; it is

[3] Portugal ratified the **European Convention on Extradition**, approved by the Assembly of the Republic by Resolution No. 23/89 of 21 August, as well as the **Additional Protocols to the Convention**, approved by the Assembly of the Republic by Resolution No. 23/89 of 21 August. Portugal is also a party to the**European Convention on Mutual Legal Assistance in Criminal Matters**, approved by the Assembly of the Republic by Resolution No. 39/94 of 14 July and has also ratified the **Additional Protocol to the Convention**, approved by the Assembly of the Republic by Resolution No. 49/94 of 12 August. Portugal has ratified the Convention on **simplified extradition procedure between the Member States of the European Union** by the President of the Republic's Decree No. 41/97 of 18 June. This Convention, concluded under Article K.3 of the EU Treaty, was signed in Brussels on 10-03-1995 and repeals the provisions of Article 18, paragraph 1 of the European Convention on Extradition.

provided therein that "*extradition of Portuguese citizens from the national territory shall be allowed, subject to reciprocity by virtue of an international convention, only in the cases of terrorism and international organised crime and provided that the legal order of the requesting State has made provision for safeguarding a fair and just trial*".

Extradition is allowed only in respect of offences punishable under the laws of the requesting State by deprivation of liberty or under a detention order for life or for an indeterminate term, subject to reciprocity pursuant to an international convention and provided that the requesting State gives assurance that such sentence or order will not be imposed or carried out.

To allow the Portuguese legal order to accept the new mechanisms currently being prepared by the European Union – the European arrest warrant and the subsequent surrender procedures in respect of citizens under arrest pursuant to such arrest warrants – Constitutional Act Nº 1/2001 of 12 December (5th amendment of the Constitution) included a new provision whereby "*the provisions of the foregoing paragraphs [described above] do not preclude the application of the rules of mutual legal assistance in criminal matters adopted within the European Union*". Nevertheless extradition on political grounds or for offences punishable under the law of the requesting State with the death penalty or any other penalty which results in irreversible harm to the physical integrity of the person claimed will not be granted.

A principle applies in the Portuguese legal order, according to which it falls to the State to try the person claimed when it is not allowed to grant his/her extradition; under Section 5 of the Criminal Code "*(1) (...) the Portuguese criminal law still applies to acts done outside its territory (...) (e) by aliens who are found in Portugal and whose extradition has been requested when such acts constitute offences for which extradition is allowed and such extradition may not be granted. (2) The Portuguese criminal law is also applicable to acts done outside the national territory, which acts will be tried by the Portuguese State by virtue of international convention or treaty.*"

Finally, it deserves being emphasised that a legislative procedure is under way which is designed to bring the domestic law in line with the Council Framework

Decision of 13 June 2002 on combating terrorism (2002/475/JHA) and the Council Framework Decision of 13 June 2002 on the European arrest warrant (2002/584/JHA).

In accordance with the legislation in force mentioned above, all relevant entities concur, in so far as national security is concerned, in the prevention and neutralisation of any attempts to use the national territory for the commission of preparatory or instrumental acts or crimes of terrorism, whether they target national or international interests.

III FINANCIAL AND ECONOMIC ASSETS FREEZE

Under the sanctions regime (paragraph 4(b) of resolution 1267 (1999) and paragraphs 1 and 2(a) of resolution 1390 (2002)), States are to freeze without delay the funds and other financial assets or economic resources of the listed individuals and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, assets or resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory.

9. **Please describe briefly:**

   The domestic legal basis to implement the assets freeze required by the resolution above.

   Any impediments under your domestic law in this context and steps taken to address them.

   See Q. 2 above.

The Portuguese legislation prevents and punishes financial operations of laundering of funds derived from crimes of terrorism, under the national law into which was transposed the Council Directive (EC) No. 91/308 on prevention of the use of the financial system for the purpose of money laundering.

Therefore, the prevention of financing of terrorism is enshrined in the Portuguese law by reference by Decree-Law No. 325/95[4] to Decree-Law No.313/93[5], which imposes on the financial institutions a series of duties of information to and notification of judicial authorities as far as suspicious financial operations are concerned. The entities who engage in such activities as the exploration of gambling in casinos, estate agency, purchase of estate for resale, payment to winners of betting or lottery prizes, as well as the accountants, external auditors and funds carriers, notaries, registrars, all are covered by the national legislation, namely by Sections 4 to 8-C of Decree-Law No. 325/95.

Accordingly, pursuant to the combined provisions of Section 3 and Section 2 of Decree-Law No. 325/95, if it is suspected that certain financial operations involve the commission, regardless of the form of participation, of crimes of terrorism, such entities must comply with the duties specified below, and any breach thereof makes the offender (legal or natural person, as provided for in Section 19 of the said Decree-Law) liable to pay a fine (s. 24 to s. 26 of Decree-Law No. 313/93) and possibly other penalties such as disqualification from holding certain posts or the publication of the final decision (section 27 of Decree-Law No. 313/93):

- identification, in general or specifically, of the customer;
- identification of the true identity of the person on whose behalf his customer is actually acting;
- duty to refuse to carry out an operation;
- special duties of diligence, including the duty to obtain written information from his customer on the source and destination of the funds;
- maintenance for at least 5 years of records of transactions;
- special duty of collaboration with the judicial authority, which comprises the provision of information concerning assets, securities and deposits with a view to their confiscation, the identity of the person who disclosed the information will be kept confidential;

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[4] Decree-Law No. 325/95 of 2 December, as amended by Act No. 65/98 of 2 September, by Act No. 104/2001 of 25 August; by Decree-Law No. 323/2001 of 17 December; by Act No. 5/2002 of 11 January and by Act No. 10/2002 of 11 February, provides for **measures against laundering of funds and other assets derived from crimes**.

[5] Decree-Law No. 313/93 of 15 September transposes into the national legal order the Council Directive of 10 June 1991 **on prevention of the use of the financial system for the purpose of money laundering**(91/308/EEC).

- duty to refrain from effecting certain operations, which are likely to be linked to the commission of crimes;
- duty to report to the judicial authorities, which applies to the authorities responsible for the oversight of financial entities as well.

In the framework of the commitments accepted by Portugal as a Member of the Financial Action Task Force on Money Laundering (FATF), the national financial system complies with all procedures recommended by the Group to prevent the use of the national financial system for the purpose of terrorist funding.

10. Please describe any structures or mechanisms in place within your Government to identify and investigate Usama bin Laden, Al-Qiaida or Taliban related financial networks, or those who provide support to them within your jurisdiction. Please indicate, as appropriate, how your efforts are coordinated nationally, regionally and/or internationally.

Producing information on counter-terrorism falls within the exclusive powers of the **Security Intelligence Service.**

The co-ordination and conduct of the investigation of crimes of terrorist conspiracy or terrorism is entrusted to the **Central Office for Investigation and Prosecution** [6] within the **Public Prosecution Service**; it examines and performs measures designed to liaise with other offices and departments, including the criminal police, for the purpose of reinforcing the simplification, rationality and effectiveness of procedures, and it undertakes studies on the nature, volume and trends of crime and the results of prevention, detection and control.

[6] The Central Office for Investigation and Prosecution is the authority responsible for the co-ordination and conduct of the investigation and for the prevention of highly organised or particularly complex violent crime as well, its membership is made up of Public Prosecutors.

Depending on the Public Prosecution, the investigation of crimes of terrorist organisation falls to the **Criminal Police**[7], more accurately to the Directorate General for Combat of Bandits.

On 13 December 2002, a **Financial Intelligence Unit** [8] was set up within the Criminal Police; its function is collecting, processing and relating information on conducts of a criminal nature, which is necessary for the prevention of or fight against money laundering and more serious fiscal offences (over €500,000), when they reveal a special complexity, an organised manner or cross-border character.

It is incumbent on this Financial Intelligence Unit to collect, centralise, process and disseminate, at the national level, information concerning the investigation of money laundering and fiscal offences; it secures, internally, the co-operation and liaison with the judicial authority, the supervisory authorities and the economic and financial agents and, internationally, the co-operation with the financial intelligence units or similar structures.

The Act on Internal Security enshrines a duty of co-operation between Security Forces and Services (National Republican Guard, the Safety Police, the Maritime Police, the Criminal Police, the Customs and Aliens Service, the Security Intelligence Service and the National Institute for Civil Aviation) demanding, particularly, the mutual transmission of data (provided that they are not under a special regime of privilege or protection) which, though not concerning solely the specific competence of the person who gets them, are necessary for the achievement of other entities' objectives.

The Security Intelligence Service, as a security service, co-operates with the other Security Forces and Services by transmitting to the entities responsible for the criminal investigation and the prosecution the facts amounting to a criminal offence which they have knowledge of in the performance of their duties, for the SIS does not have any criminal or judicial power.

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[7] Powers specified by the Act on Organisation of Criminal Investigation (Act No. 21/2000 of 10 August) and by the Organisational law of the Criminal Police (Decree-Law No. 275-A/2000 of 9 November).

[8] Decree-Law No. **304/2002 of** 13 December amending the Organisational law of the Criminal Police, approved by Decree-Law No. 275-A/2000 of 9 November.

Under the co-ordination of the **Security Coordinating Office**, an organ specialised in and for the technical and operational co-ordination of the activity carried out by the Security Forces and Services and which functions under the direction of the Prime Minister, through the Minister for Internal Affairs, it was set up, on 25 February 2003, the **Unit for Anti-Terrorism Co-ordination (UCAT)**; its function is to secure the co-ordination and the sharing of information within the framework of combating terrorism.

The UCAT is made up of representatives of the Security Intelligence Service, of the *Serviço de Informações Estratégicas de Defesa e Militares*[9] (Strategic Intelligence), of the Customs and Aliens Service as well as of the Criminal Police.

The measures adopted within the **European Union** in the context of the fight against terrorism were established by the Extraordinary European Council of 21 September 2001, a meeting held after the attacks of September the 11th and which called, expressly and for the first time, for the strengthening of the collaboration between the European intelligence services and between the latter and the police entities in combating terrorism.

Hence, the SIS takes part in an informal international structure of the European Intelligence Service, set up within the SIS multilateral relations in Europe, which is responsible for assessing the terrorist threat in the European Union and constitutes the interface between the security intelligence services and the European Union, the EUROPOL and the United States.

The SIS is represented, together with members of the other Security Forces and Services, in the ***Terrorism Working Group – TWG***, of the Third Pillar of the European Union, that implements such measures connected with Justice and Internal Affairs as are specified in the Plan of Action to Combat Terrorism, namely by putting

[9] The Defence and Military Strategic Intelligence Service is dependent on the Prime Minister through the Defence Minister, and entrusted with the production of information which contribute towards safeguarding the national independence, the national interests, external security of the Portuguese State, accomplishing the Armed Forces missions and ensuring the military security.

forward more effective mechanisms for police co-operation and participating in the drawing up of Community lists of terrorists and terrorist organisations.

In the framework of the Second Pillar of the EU, the SIS provides assistance to the Directorate General for Multilateral Affairs of the Ministry of Foreign Affairs, by participating, in its capacity as an expert, in the meetings of the group COTER, which deals with terrorist-related issues outside the EU.

11. Please convey the steps banks and/or other financial institutions are required to take to locate and identify assets attributable to, or for the benefit of, Usama bin Laden or members of Al-Qaida or the Taliban, or associated entities or individuals. Please describe any "due diligence" or "know your customer" requirements. Please indicate how these requirements are enforced, including the names and activities or agencies responsible for oversight.

See Q. 2 and Q. 9 above.

The law provides for an exception to the professional secrecy: the disclosure - by public or private financial entities (which covers their organs, directors, employees or principals) to the appropriate authorities - of information in good faith about suspicious financial operations and the production of the supporting documents in respect of assets, deposits or securities, and no accountability will result thereof for the person who provides such information.

Following the attacks of September 11th, the Finance Minister issued, on 11 October 2001, the executive decision mentioned in Q.2, whereby he ordered the freezing of all financial resources belonging to the persons or entities listed in the Annex to the Council Regulation (EC) No. 467/2001 of 6 March, as amended by Council Regulation (EC) No. 1354/2001 of 4 July, both relating to the Taliban.

In addition, Act No. 5/2002 was passed on 31 October 2001, providing for a special regime for the gathering of evidence (abrogation of tax confidentiality as well as

of secrecy imposed on financial entities, audio and video tape recording) and the confiscation of assets; it will be applied to such crimes as trafficking in drugs or weapons, corruption, money laundering, conspiracy and other forms of organised crime.

Systematically, the investigation of this type of crime means the investigation of financial transactions. The regime that has been adopted aims at accelerating the regime and making it operative, since banking secrecy and tax confidentiality have been lifted for that type of crime, where such means of investigation are most needed.

One of the changes refers to the power of the judicial authority, responsible for the conduct of the proceedings, to request for information. From now on, during the inquiry, the Public Prosecutor who conducts the investigation may request the financial entities and the tax authorities for any information needed. There will be a direct contact between the authorities who conduct the investigation and the financial entities, during the inquiry.

The said law also clarifies the procedure for handling requests for information, including as regards the response to be adopted by the financial entities. The latter must indicate the central organs responsible for the execution of the said requests, within the duties imposed on the financial entities in pursuance of the combined provisions of Decree-Law No. 325/95 and Decree-Law No. 313/93 (see Q. 9 above).

A new mechanism has been introduced into the Portuguese legal order for the investigation of crimes, that is, the control of bank accounts; moreover, it is also provided for in the Additional Protocol to the Convention on Mutual Legal Assistance in Criminal Matters[10] concluded between the Member States of the European Union. Such mechanism, which depends upon a court warrant, allows the investigating authorities to monitor the transactions on a bank account as they are carried out.

Finally, provision is made for the lawfulness of using voice and image recording [11], within the scope of the investigation of the said crimes, following a court warrant.

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[10] Ratified by the President of the Republic by Decree No. 64/94 of 12 August and approved by the Assembly of the Republic by Resolution No. 49/94 of 12 August, too.

[11] Under criminal law and procedure, such evidential means are admissible only with the consent of the person concerned; this requirement proved itself too restrictive for theinvestigation of the types of crimes covered by the law.

The Ministry of Finance, the Bank of Portugal, the Ministry of Justice, the Ministry of Internal Affairs and the Security Forces and Services collaborate in preventing, detecting and, if appropriate, investigating the crimes related to the matters specified above.

12. **Resolution 1455 (2003) calls on Member States to provide "a comprehensive summary of frozen assets of listed individuals and entities." Please provide a list of the assets that have been frozen in accordance with this resolution. This list should also include assets frozen pursuant to resolutions 1267 (1999), 1333 (2001) and 1390 (2002). Please include, to the extent possible, in each listing the following information:**
    - **identification(s) of the person or entities whose assets have been frozen;**
    - **a description of the nature of the assets frozen (i.e., bank deposits, securities, business assets, precious commodities, works of art, real estate property, and other assets);**
    - **the value of assets frozen.**

    Does not arise.

13. **Please indicate whether you have released pursuant to resolution 1452 (2002) any funds, financial assets or economic assets that had previously been frozen as being related to Usama Bin Laden or members of the Al-Qaida or the Taliban or associated individuals or entities. If so, please provide reasons, amounts unfrozen or released and dates.**

    Does not arise.

14. **Pursuant to resolutions 1455 (2003), 1390 (2001), 1333 (2000) and 1267(1999), States are to ensure that no funds, financial assets or**

economic resources are made available, directly or indirectly, to Listed individuals or entities or for their benefit, by nationals or by any persons within their territory. Please indicate the domestic legal basis, including a brief description of laws, regulations and/or procedures in place in your country to control the movements of such funds or assets to designated individuals and entities. This section should include a description of:

- **The methodology, if any, used to inform banks and other financial institutions of the restrictions placed upon individuals or entities listed by the Committee, or who have otherwise been identified as members or associates of Al-Qaida or the Taliban. This section should include an indication of the types of institutions informed and the methods used.**
- **Required bank reporting procedures, if any, including the use of Suspicious Transaction Reports (STR), and how such reports are reviewed and evaluated.**
- **Requirements, if any, placed on financial institutions other than banks to provide STR, and how such reports are reviewed and evaluated.**
- **Restrictions or regulations, if any, placed on the movement of precious commodities such as gold, diamonds and other related items.**
- **Restrictions or regulations, if any, applicable to alternate remittance systems such as - or similar to - "hawala", as well as on charities, cultural and other non-profit organizations engaged in the collection and disbursement of funds for social or charitable purposes.**

See Q. 9 above.

IV TRAVEL BAN

Under the sanctions regime, all States shall take measures to prevent the entry into or transit through their territories of Listed individuals (paragraph 1 of resolution 1455 (2003), paragraph 2b of resolution 1390(2002)).

15. Please provide an outline of the legislative and/or administrative measures, if any, taken to implement the travel ban.

The Security Intelligence Service collaborates with the Customs and Aliens Service in assessing the threats to the national security as regards the granting of visas, pursuant to the national law governing the entry, stay, exit and expulsion of aliens of the Portuguese territory; those organs have reinforced their watch over citizens coming from countries deemed to be dangerous as far as international terrorism is concerned.

In fact, the law provides for the hearing of the SIS, which will provide a technical opinion before the granting of visas in case of national security.

16. Have you included the names of the listed individuals in your national "stop list" or border checkpoint list? Please briefly outline steps taken and any problems encountered.

See Q. 2 above.

17. How often do you transmit the updated List to your border control authorities? Do you possess the capability of searching List data using electronic means at all your entry points?

As often as the updating of the relevant information so requires.
Yes, since all our entry points are computerised.

18. Have you stopped any of the listed individuals at any of your border points or while transiting your territory? If so, please provide additional information, as appropriate.

Does not arise.

19. Please provide an outline of the measures, if any, taken to incorporate the List in the reference database of your Consular offices. Have your visa issuing authorities identified any visa applicant whose name appears on the List?

Does not arise.

V ARMS EMBARGO

Under the sanctions regime, all States are requested to prevent the direct or indirect supply, sale and transfer, to Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals and entities associated with them, from their territories or by their nationals outside their territories of arms and related material of all types, including the provision of spare parts and technical advice, assistance, or training related to military activities (paragraph 2(c) of resolution 1390 (2002) and paragraph 1 of resolution 1455 (2003)).

20. What measures, if any, do you now have in place to prevent the acquisition of conventional arms and weapons of mass destruction (WMD) by Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them? What kind of export control do you have in place to prevent the above targets from obtaining the items and technology necessary for weapons development and production?

As far as the prevention of arms sales to terrorists is concerned, it is important to mention that Portugal is a party to several international organisations which have as their objective the fight against the proliferation and criminal use of weapons.

Accordingly the Portuguese State complies with its international commitments, accepted in different *fora*, including the Nuclear Suppliers' Group (NSG), the Missile Technology Control Regime (MTCR), the Australia Group (Chemical and Bacteriological Weapons) and the Wassenaar Arrangement (Dual-use items other than those included in the preceding Groups) and complies with the EU law, namely the Council Regulation (EC) No. 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology.

21. What measures, if any, have you adopted to criminalize the violation of the arms embargo directed at Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them?

As it was stated in Q. 2 above, it is important to remind that Act No. 11/2002 of 16 February makes it a criminal offence where anyone fails to comply with the financial or commercial sanctions imposed by UNSC Resolution or EU Regulation placing restrictions on the establishment or maintenance of financial or commercial relations with expressly identified States or other entities or individuals.

22. Please describe how your arms/arms broker licensing system, if any, can prevent Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them from obtaining items under the established arms embargo.

Decree-Law No. 399/93 of 3 December transposes into the domestic law the provisions of the Council Directive of 18 June 1991 on control of the acquisition and possession of weapons (91/477/EEC).

Under Section 2 of the said Decree-Law, a European firearms pass – a document which enables its holder to possess and use one or more firearms in any Member State of the European Community, provided that s/he is authorised thereto by the Member State of destination - is granted to a person who has a licence or authorisation to use and carry a weapon, as well as to a person exempt from such requirement under the law.

Pursuant to the Regime on the Use and Possession of weapons, approved by Act No. 22/97 of 27 June, the granting of authorisations for the use and carrying of a defensive weapon[12] is restricted to those aged at least 21 who, concurrently, fulfil the following conditions -

> "*(a) Enjoy all civil and political rights;*
>
> *(b) Prove to need an authorisation for professional reasons or imperative circumstances of self-defence;*
>
> *(c) Do not have been subjected to detention orders nor convicted by a court of any crime specified in subsection (3), and do not have been convicted of any offence related to drugs or drunk driving;*
>
> *(d) Have submitted to a medical examination and to specific psycho-technical tests and tests of expertise and comply with their requirements, under the terms to be laid down by regulation.*
>
> *3. No authorisation shall be granted, as provided for in paragraph (c) of the foregoing subsection, in the case of the following crimes: murder, aggravated murder, qualified murder, murder at the request of the victim, assistance in or incitement to suicide, infanticide, manslaughter by the use of a weapon, serious assault, aggravated assault, ill-treatment or overburdening of a minor, incapable or spouse, participation in a riot*

[12] According to Section 2 (1) and (2) of the Regime on Possession and Use of Firearms, authorisations may be granted only in respect of the defensive weapons described below -
(a) Pistols with calibre not exceeding 6,35 mm inclusive, with a barrel not exceeding 8 cm;
(b) Revolvers with calibre not exceeding 7,65 mm (=32"), with a barrel not exceeding 10 cm»

or affray, threat by the use of a firearm, unlawful detention, slavery, kidnapping, hostage-taking, sexual intimidation, rape, sexual assault on a person unable to resist, sexual assault on an in-patient, trafficking in persons, encouraging another to commit indecent assault, sexual exploitation of children, sexual exploitation of juveniles and dependants, homosexual acts with minors, enticing or compelling a minor for sexual purposes, theft, violence after stealing, genocide, racial discrimination, war crimes against civil population, arson, explosion, and other particularly dangerous conducts, torture and other inhuman, cruel or degrading treatment, explosive substances or similar substances and weapons, hijacking or seizure of an aircraft, ship or train, endangering the safety of air, sea or railway passengers, conspiracy, terrorist organisations and terrorism."

The renewal of authorisation for the use and possession of a defensive weapon is conditional on the requirements specified above being fulfilled as well as on the passing of the specific examinations.

Under the law, an authorisation may be immediately withdrawn if the weapon is being used for a purpose other than that for which it was intended; if its owner is found guilty when his weapon has been stolen or diverted, or when the weapon has been handled by a minor.

As regards hunting, precision or sports weapons, authorisations may be granted to those who enjoy all civil and political rights, have not been subjected to any detention order or convicted by a court of any crime specified above and have submitted to a medical examination and to appropriate psycho-technical tests and specific expertise tests.

Finally, it is important to stress that, under section 6 of the Regime on the Use and Possession of Weapons, anyone who is found in possession of a defensive or hunting weapon without a certificate, or without it being registered, or anyone who transfers, by any means, a weapon to a person who is not duly authorised to carry one,

shall be punished with imprisonment for a maximum term of 2 years or with a fine for a maximum of 240 days.

23. Do you have any safeguards that the weapons and ammunition produced within your country will not be diverted/used by Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated?

Matters connected with defence arms and equipment are the responsibility of the Directorate General for Defence Armaments and Equipment (DGAED), of the Ministry of Defence; it is incumbent on the DGAED to authorise and monitor the industry and trade of Military Items and Technology (Armaments) with a view to safeguarding the strategic interests of the country, the defence thereof and the commitments that Portugal has accepted as a Member of the European Union and those imposed by the international organisations wherein Portugal participates.

According to the Portuguese law governing the export of items and technology for military use, the execution of orders for war material, ammunitions and equipment must be submitted to the Defence Minister who will decide thereupon, as well as to the opinion of the Ministry of Foreign Affairs (Decree-Law No. 371/80 of 11 September)

As regards export of items produced in Portugal, imported previously or those in transit through the Portuguese territory, the Defence Ministry is empowered by the law to ban the export thereof when it would otherwise be likely to compromise the interests of the Portuguese State (Decree-Law N°1/86 of 2 January).

The Ministers for Defence, Internal Affairs, Finance, Foreign Affairs, Industry and Energy, Trade and Tourism adopted by an Order[13] a list of dual-use items, military-use items and technology, the production and trade whereof, since they may harm the national strategic interests, are subjected to prior authorisation and certification by the Directorate General for the Customs Service and Excise Duty (DGAIEC) of the

[13] Decision No. 439/94 of 29 June, approved pursuant to **DecreeLaw No. 436/91 of 8 November.**

Ministry of Finance and by the Directorate General for Defence Armaments and Equipment.

In the framework of counter-proliferation, it falls to the Inter-ministerial Commission for the Trade in Strategic Items to decide on the individual assessment of the need for an authorisation to be granted in respect of any dual-use items other than those specified in the said list.

The access by undertakings to the manufacture and trade of arms requires the Defence Minister's authorisation, according to the regime laid down by Decree-Law No. 396/98 and Decree-Law No. 397/98, both of 17 December; such authorisation will be granted only where the following requirements are fulfilled:

(a) Adequacy and sufficiency of human resources with regard to the intended objectives;
(b) Adequacy and sufficiency of the technical means and financial resources for carrying out the activity;
(c) Qualification and integrity of the entrepreneurs, partners and members of the social bodies;
(d) National security credentials granted by the National Security Authority.

In addition to the national legislation referred to above, Portugal accepted the European Union Code of Conduct, which sets up a mechanism for consultation and exchange of information on the export of conventional arms.

Furthermore, Portugal is a party in the framework of the following international instruments:

- **Wassenaar Arrangement,** concluded in December 1995, aims to promote transparency in the transfer of conventional arms, dual-use items and technology, thereby preventing any situation which might endanger the security and stability at regional and international levels.
- **Missile Technology Control Regime (MTCR),** established in 1987, aims to bar the proliferation of missiles and unmanned air vehicles

capable of delivering weapons of mass destruction, as well as their equipment and associated technologies.

- **Convention on Prohibition of Chemical Weapons,** an international legal instrument which aims at suppressing chemical weapons within 10 to 15 years, by dismantling factories and neutralising older and recent stocks capable of polluting the environment.
- **Convention on Prohibition or Limitation of the use of certain weapons capable of causing traumatic effects in excess**, its Protocol II regulates the prohibition or limitation of the use of mines, booby-traps and other similar devices.

VI ASSISTANCE AND CONCLUSION

24. Would your state be willing or able to provide assistance to other States to help them implement the measures contained in the above-mentioned resolutions? If so, please provide additional details or proposals.

Portugal has availed itself of its contacts with third countries, both at multilateral and bilateral levels, to systematically raise awareness to the need for further developing international co-operation in this field.

At the time of some bilateral visits, that issue was included in the agenda, and it is worth mentioning, on the multilateral and regional level, the Extraordinary Summit on Terrorism, held on the initiative of Portugal and attended by the Ministers for Foreign Affairs of the countries of the Mediterranean Forum (24-25/10/01, in Aghadir).

The importance of signing, ratifying and implementing the international Conventions, as well as the value added by the Global Convention once adopted, have been particularly stressed during the said contacts following the 11 September.

Portugal has availed itself of its special relationship with the Portuguese-speaking countries, including in the more institutional framework of the Community of Portuguese-speaking Countries (CPLP), to make an appeal in that sense. The

Declaration of the CPLP on Combating International Terrorism of 31/10/01 illustrates such commitment.

Portugal has expressed its willingness to assist in the transposition of international legislation in this field into the national laws by the sharing of information, co-operation between the sectoral Ministries or by other means to be agreed upon.

Therefore, Portugal has made available the Portuguese version of the UN Conventions on Terrorism; it has undertaken co-operative actions in matters of good governance, justice and internal affairs in view of the importance they represent to this common fight.

Some of those States have found in the Portuguese experience an example to use in drawing up their reports to submit to the UN and, on the domestic level, in the preparation of measures applicable in the fight against international terrorism.

In the framework of the bilateral relations between the EU and third countries, Portugal took part in the exercise of diplomatic persuasion, as agreed in the EU; Portugal kept a regular dialogue with those countries, while it held the Presidency of the Council of the EU, as regards both the steps concerning the Conventions and the assessment of the degree of commitment of the third countries to the fight against international terrorism.

25. Please identify areas, if any, of any incomplete implementation of the Taliban/Al-Qaida sanctions regime, and where you believe specific assistance or capacity building would improve your ability to implement the above sanctions regime.

We have no further comments to make.

26. Please include any additional information you believe pertinent.

These subjects were already included in the national report to the UNSC *Counter-Terrorism Committee* pursuant to paragraph 6 of Resolution 1373 (2001).